

Notice of Allowability

Application No.

10/668,646

Examiner

Jerrold Johnson

Applicant(s)

ANDERSEN ET AL.

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment 12 March 07 and Petition decision 31 July 07.
2. ☒ The allowed claim(s) is/are 1-25.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The Examiner has considered the Applicant's arguments in support of patentability. The Applicant's position is there would be little benefit to providing a top pad to the package of Roth as the Examiner has set forth in the previous rejections. This argument isn't particularly strong. The Examiner fails to see how providing a top pad to the package of Roth would be any less beneficial than to the package of the present application.

However, upon further review, the Examiner does believe that there is a more convincing argument as to why one of ordinary skill in the art would not add the top pad if Anderson to Roth. The package of the present invention and in the teaching reference to Anderson is designed to be unpacked in its entirety all at once so that the containers within the package are slid from the support members (trays, essentially) onto a merchandising shelf. The package is unpacked not by a customer but by a stocking employee.

Conversely, the contents of the package of Roth are meant to be merchandised directly from the unitized package, and the containers are unpacked individually by the customer. Fig. 2 shows how the shrink wrap is torn away to allow a customer to remove the number of containers desired while leaving the remainder of the package in a continued unitized form until the next customer removes additional container. Accordingly, the condition shown in Fig. 2 is a condition that would exist on the sales floor. If a top pad were disposed within this package of Roth in the manner claimed, this top pad would inhibit the removal of containers by the customer as intended. A top pad, such as is taught by Anderson, would obstruct access to the containers of Roth in a more significant way than the shrink wrap, which easily tears away as is shown in Fig. 2. Described differently, the shrink wrap of Roth can easily be torn away to remove additional containers in the manner that Roth describes and shows in Fig. 2. Conversely, a top pad would not be easily moved out of the way and would be a hindrance to the removal of containers by customers.

Accordingly, if a modification inhibits the described intended use of an invention, then that modification is improper. The Examiner is of the opinion that the modification of applying the teaching of a top pad of Anderson to the package of Roth would necessarily hinder the intended use of Roth, and as such is an improper application of 35 USC 103(a).

The claims are allowable over the prior art of record including the reference to Roth.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JDJ


Mickey Yu
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